No. 04-809

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IN THE

Supreme Court of the United States

NORFOLK DREDGING COMPANY, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA AND BEAN STUYVESANT, L.L.C.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF *AMICI CURIAE* THE DREDGING CONTRACTORS OF AMERICA, THE MARITIME CABOTAGE TASK FORCE, THE SEAFARERS INTERNATIONAL UNION, THE TRANSPORTATION INSTITUTE, AND THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA IN SUPPORT OF THE PETITIONER

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INTEREST OF *AMICI*[2]

Amici represent a broad group of maritime and construction industry organizations united in support of *U.S. citizen control* of the domestic waterborne fleet, including the dredg-

[1] *Amici* certify that this brief was authorized in whole by Counsel for *Amici* and no part of the brief was authorized by any attorney for a party. No other person or entity made any monetary contribution to the preparation or submission of this brief. Rule 37(6).

[2] The written consents of the parties were requested and all parties have consented in writing to the filing of this brief. Copies of the written consents have been filed with the Clerk of the Court.

ing fleet. Each *amicus*, or its individual members, participated in consideration of the amendments to the Foreign Dredge Act of 1906 ("Dredge Act") made by the Oceans Act of 1992 (the "1992 Amendments").[3] Because of the significant harm to the U.S. dredging industry, the U.S. maritime industry, and the nation threatened by the Federal Circuit's erroneous interpretation of the STUYVESANT exception to the 1992 Amendments,[4] *amici* file this brief in support of the Petition for a Writ of Certiorari filed by Petitioner Norfolk Dredging Company, Inc. ("Norfolk").[5]

The Dredging Contractors of America ("DCA") is the national trade association for the dredging and marine construction industry. The dredging industry is diverse, with some 40 to 50 dredging contractors who contract with the U.S. Army Corps of Engineers ("Army Corps") to help keep America's ports and waterways open and accessible for trade and national defense. DCA member companies perform approximately 75 percent of the Army Corps dredging contracts by value.

The Maritime Cabotage Task Force ("MCTF") is a broad-based coalition of the U.S. maritime industry representing ship and barge owners and operators, dredging companies, labor groups, shipbuilders, repair yards, marine equipment manufacturers and vendors, trade associations, pro-defense groups and companies in other modes of transportation, all with a common purpose of supporting and promoting the

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[3] *See* Section 5501(a)(1), Pub. L. 102-587, 106 Stat. 5084-85 (Nov. 4, 1992), *codified at* 46 U.S.C. App. § 292.

[4] *See* 46 U.S.C. App. § 292 note.

[5] The Federal Circuit's opinion, reported as *Norfolk Dredging Co., Inc. v. United States*, 375 F.3d 1106 (Fed. Cir. 2004), is reproduced in Petitioner's Appendix. *See* Pet. App., at 1a-11a. The opinion of the Court of Federal Claims, reported as *Norfolk Dredging Co., Inc. v. United States*, 58 Fed. Cl. 741 (2003), is reproduced in Petitioner's Appendix. *See* Pet. App., at 12a-50a.

long-standing cabotage laws, including the Dredge Act of 1906 as amended by the Oceans Act of 1992. American cabotage laws, like those of nations throughout the world, require that cargo and passengers transported by water between domestic ports and other domestic maritime services be performed by domestic vessels, e.g., those that are U.S.-owned, U.S.-controlled, U.S.-crewed and U.S.-built.

The Seafarers International Union ("SIU"), Atlantic, Gulf, Lakes and Inland Waters District/NMU, AFL-CIO, represents unlicensed United States merchant mariners sailing aboard U.S.-flag vessels in the deep sea, Great Lakes and inland trades. The union also represents licensed U.S. mariners in the Great Lakes and inland sectors. SIU members sail in the three shipboard departments: deck, engine and steward. They work aboard dredging vessels and a wide variety of other vessels, including commercial containerships and tankers, military support ships, tugboats and barges, passenger ships, gaming vessels and many more. Chartered in 1938, today the SIU is the largest North American union representing merchant mariners and prides itself on representing the best-trained, most efficient crews in the world. It is a dynamic organization dedicated to protecting the membership's job security by constantly staying a step ahead of the ever-changing needs of the industry.

The Transportation Institute ("TI") is a Washington, D.C.-based non-profit corporation dedicated to maritime research, education, and promotion. It has participated as an amicus on maritime issues previously in this Court, *see Chao v. Mallard Bay Drilling, Inc.*, No. 00-927 (June 11, 2001), and in other courts. TI supports a wide range of programs that promote America's maritime strength to assure that the U.S. retains a viable, balanced, safe, and dependable water transportation capability and plays a prominent role in national forums, seminars, and public policy meetings where questions of maritime policy are under scrutiny. TI's member companies

participate in all phases of the nation's deep sea, foreign and domestic shipping trades, dredging operations, barge and tugboat operations on the Great Lakes and on the 25,000 mile network of America's inland waterways. All vessels operated by TI's member companies are U.S. registry—crewed by American citizens, operating under the world's highest safety standards, and flying the American flag.

The Associated General Contractors of America ("AGC") is the largest and oldest of the nationwide trade associations of construction contractors and the widely recognized voice of the construction industry. AGC was formed in 1918 at the express request of President Woodrow Wilson and today it represents more than 33,000 firms in nearly 100 chapters throughout the United States. Among the association's members are more than 7,000 of the nation's leading general contractors, more than 12,000 specialty contractors, and more than 14,000 material suppliers and service providers to the construction industry. These firms construct commercial buildings, factories, warehouses, highways, airports, water works facilities and multi-family housing units. In addition, they regularly perform contracts for the construction of bridges, tunnels, dams and other projects on and around the nation's inland waterways, including marine construction and dredging contracts for the nation's ports and the U.S. Army Corps of Engineers. Within its Federal and Heavy Construction Division, AGC houses a national committee specifically for marine contractors. As an *amicus curiae*, AGC regularly participates in nationally significant cases in both state and federal courts, including the U.S. Supreme Court.

Amici are filing this brief in support of the Petitioner because the interpretation by the Federal Circuit of the STUYVESANT grandfather provision not only subverts the purpose Congress had in enacting that provision and long-standing federal maritime policy intended to prevent foreign

control over domestic maritime activities, but also because it will damage the U.S. dredging industry.

SUMMARY OF ARGUMENT

U.S. citizen control of the U.S. dredging industry is at the heart of this case. The 1992 Amendments to the Dredge Act sought to bring the U.S. citizenship ownership and control obligations for dredges employed in U.S. waters into line with longstanding requirements applicable to domestic marine transportation generally by requiring that dredging vessels operating in the United States be under the control of entities that are at least 75% equity owned by U.S. citizens.[6] Congress acted because at the time, a large foreign dredging company, Royal Boskalis Westminster, NV, ("Royal Boskalis"), was circumventing then-existing ownership and control requirements through an elaborate business structure involving a single large hopper dredge, the STUYVESANT, which it operated in the United States through various chartering arrangements with its wholly owned U.S. subsidiary, Stuyvesant Dredging Company ("SDC").

The 1992 Amendments thus required dredges operating in the United States to be owned by U.S. citizens and limited any charters of such vessels only to U.S. citizens. A grandfather clause allowed the STUYVESANT generally to continue in domestic operation under charter to non-citizen SDC for as long as the STUYVESANT remained under U.S. flag, or (if earlier) until the end of its useful life in 2022. In 1992, SDC was only in the *hopper* dredging business and operated only the hopper dredge STUYVESANT; thus, the grandfather permitted SDC to continue in this business by chartering in other *existing* hopper dredges, but limited

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[6] Entities that meet the 75% equity test and other tests are "U.S. citizens" for purposes of operating vessels in coastwise trade under Section 2(c) of the Shipping Act, 1916, as amended 46 App. U.S.C. § 802(c).

SDC's ability to charter *non-hopper* dredges to those narrow circumstances as were necessary to fulfill *hopper* dredging obligations under a specific contract or in the event of a temporary vessel disability. *See* pp. 10-13, *infra*.

Notwithstanding the context of the 1992 Amendments to the Dredge Act, the Federal Circuit's ruling allows Royal Boskalis to continue to expand—virtually without limitation—beyond its then-existing hopper dredge business into the much larger non-hopper segment of the U.S. market.[7] Thus, under the Federal Circuit's ruling a narrow grandfather provision has been expanded into a loophole permitting Royal Boskalis to enter for the first time into the non-hopper dredging business in the United States. As a result, Royal Boskalis now effectively controls over a dozen dredging and support vessels apart from the STUYVESANT through its relationship with SDC and joint venture with Respondent Bean Stuyvesant, LLC ("Bean Stuyvesant").

The Federal Circuit's interpretation of the STUYVESANT grandfather provision, subverts Congressional intent in enacting the 1992 Amendments. If the scope of the non-hopper exception is extended as far as the Federal Circuit's interpretation allows, the 1992 intent of Congress to tighten U.S. citizen control over vessels employed in U.S. dredging would be wholly subverted. This is because, with the sole

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[7] Hopper dredges are large, self-propelled ocean going ships with licensed crew that store and transport dredge material. Non-hopper dredges are typically smaller, non-self propelled, and are unable to store dredge material on board. They comprise distinct market segments and the equipment is rarely interchangeable. About 95.5% of the U.S. dredge fleet are non-hopper dredges and only 4.5% are hopper dredges. *See World Dredging Mining and Construction*, March 2004 (38th Annual Directory of Worldwide Dredge fleets). About 80% of recent Army Corps solicitations utilize non-hopper equipment, whereas 20% involve only hopper dredges. *See Army Corps Dredging Information System*, at http://www.iwr.usace.army.mil/ndc/dredge/dredge.htm.

exception of the *two* hopper dredges that have been documented since the 1992 date of enactment, non-citizen SDC would be legally able to charter *every other dredge* in the U.S. industry, i.e., *every hopper dredge* documented before 1992, and *every single non-hopper dredge*, regardless of the date of documentation.

The Federal Circuit's interpretation will allow the narrow grandfather exception to become a huge loophole, that grants a unique and wholly unintended competitive advantage to a foreign-owned dredging contractor to the detriment of the long term viability of the U.S. dredging industry and contrary to the clear purpose of the 1992 Amendments. Review by the Supreme Court is necessary to preserve the integrity of the 1992 Amendments and to prevent the resulting harm to American dredging companies.

ARGUMENT

I. THE FEDERAL CIRCUIT'S DECISION FRUSTRATES THE PURPOSE AND INTENT OF THE 1992 AMENDMENTS BY ALLOWING FOREIGN CONTROL OF THE U.S. DREDGING INDUSTRY.

For reasons of homeland security, national security and economic security, federal maritime law has long adhered to fundamental cabotage principles requiring U.S. domestic waterborne commerce ("cabotage" or "coastwise" trade) to be conducted with vessels built in the United States, documented under U.S. law, and crewed, owned and controlled by U.S. citizens.[8] Applied to dredging, these requirements ensure

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[8] These laws have been implemented in various forms depending on the particular maritime sector involved. *See* 46 U.S.C. App. § 883 (cargo); 46 U.S.C. App. § 289 (passengers); 46 U.S.C. App. §§ 12102(c); 12108 (fisheries); 46 U.S.C. App. § 316 (towing); and 46 U.S.C. App. § 292 (dredging).

U.S. control of U.S. waterways maintenance and deepwater access to U.S. ports and naval bases.

Prior to 1992, restrictions on dredging in the United States were governed by the Foreign Dredge Act of 1906, 34 Stat. 204, which stated that a foreign built dredge could not engage in domestic dredging unless documented as a vessel of the United States, but allowed ultimate ownership and control by non-citizens, in stark contrast to the prevailing requirements governing other domestic marine transportation and services. Because the restrictions on dredging vessels were less stringent than those in other segments of the domestic maritime industry they were subject to abuse. The 1992 amendments were enacted precisely to prevent such abuse by Royal Boskalis and others.

The relative infirmity of the coastwise protections of the Dredge Act became apparent when Royal Boskalis arranged for the construction of the STUYVESANT, a large self-propelled hopper dredge, and its introduction into the domestic dredging industry through its wholly-owned U.S. subsidiary, SDC. This development, and concern over further expansion of foreign control, was one of the principal factors that led to the 1992 Amendments. The 1992 Amendments were to "close loopholes," in order to make "all domestically operated dredges subject to the same documentation, and ownership requirements as other vessels under the coastwise trade laws" so as to "ensure that these vessels are always under the control of U.S. citizens."[9]

Thus, the 1992 Amendments provided that the charterer of any vessel engaged in domestic dredging must be an individual who is a U.S. citizen or an entity with at least 75%

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[9] 138 Cong. Rec. H5017-18 (daily ed. June 22, 1992) (statement of Rep. Tauzin, Chairman of the Coast Guard Subcommittee of the House Merchant Marine and Fisheries Committee and floor manager of the bill).

U.S.-citizen control.[10] The 1992 Amendments included four separate "grandfather" provisions—subparagraphs (A)-(D) of Section 5501(a)(2)—for certain existing dredging operations. Subparagraph (A) is devoted entirely to an exception for the hopper dredge vessel STUYVESANT. This exception provides, in pertinent part, that the enhanced U.S. citizenship requirements do not apply to:

> (A) (i) The vessel STUYVESANT, official number 648540;
>
> (ii) any other hopper dredging vessel documented under chapter 121 of title 46, United States Code before the effective date of this Act and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest; however, this exception expires on December 3, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs; and
>
> (iii) any other non-hopper dredging vessel documented under chapter 121 and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest, as is *necessary* (a) to fulfill dredging obligations under a *specific* contract, including any extension periods; or (b) as temporary replacement capacity for a vessel which has become disabled but only for so long as the disability shall last and until the vessel is in a position to fully resume dredging operations; however, this exception expires on December 8, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs[.]
>
> ***

46 U.S.C. App. § 292 note (emphasis added).

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[10] *See* 46 U.S.C. App. §§ 292, 802.

Although the Respondents' reading of subparagraph (A) was rejected by the Court of Federal Claims, the Federal Circuit, analyzes the subparagraph by treating clause (A)(iii) in complete isolation from the preceding clauses (A)(i) and (A)(ii). Such treatment is improper in that it plainly ignores the overall statutory context of the entire STUYVESANT grandfather in subparagraph (A) and the three clauses within that subparagraph taken as a whole and in the context of what Congress was seeking to accomplish with the 1992 Amendments. As this Court has recently stated, "statutory language must be read in its proper context and not viewed in isolation." *Koons Buick Pontiac GMC, Inc. v. Nigh*, ___ U.S. ___, 125 S. Ct. 460, 467 (2004) (quoting *McCarthy v. Bronson*, 500 U.S. 136, 139, 111 S. Ct. 737, 114 L. Ed. 2d 194 (1991)).

The three clauses of subparagraph (A) must be properly read in concert, in that all three are explicitly connected to SDC's operation of the STUYVESANT, the single hopper dredge that SDC operated in the United States in 1992. Clause (A)(i) is exclusively concerned with the STUYVESANT. Clause (A)(ii) is explicitly tied to the continued U.S. operation of the STUYVESANT and simply permits SDC to continue in the hopper dredging business at that time by chartering other *hopper* dredges, but limits them to those that were documented under U.S. flag in 1992. Like the previous clause, clause (A)(iii) is also explicitly tied to the continued U.S. operation of the STUYVESANT and permits SDC to operate certain non-hopper dredges to assist hopper dredge vessels operating under clauses (A)(i) and (A)(ii) but only for very limited purposes, i.e., "as is necessary" to fulfill dredging obligations under a "specific contract", or in the event of a vessel disability.

Thus, SDC, like its U.S. competitors in the hopper dredge business, could resort to the use of non-hopper dredges to complete a particular project (i.e., under a "specific contract")

if it were required (i.e., "as is necessary") because adequate hopper dredge capability was not available. Absent this ability, SDC would be at a competitive disadvantage to its U.S. competitors. But in making the limited allowance that it did Congress could not have intended to elevate such a limited allowance into a competitive *advantage* over SDC's U.S. competitors.

As noted by the Court of Federal Claims, the three clauses of subparagraph (A) are all expressly tied to one vessel, the hopper dredge STUYVESANT. Reading the three clauses of subparagraph (A) in concert compels the conclusion, consistent with the legislative history, that the grandfather clause was adopted to limit SDC, as a foreign controlled company, to operations in the hopper segment of the business in which it had always been engaged. This was done first, under clause (A)(i), by allowing the continued operation of the hopper dredge STUYVESANT; second, under clause (A)(ii), by allowing the chartering of additional hopper dredges provided they were documented at the time; and third, under clause (A)(iii), by allowing the chartering of non-hoppers, but only to the extent it became *necessary* to bring in additional equipment to fulfill a *specific* contract that had already been entered into (and therefore necessarily involved hopper dredges), or to replace a disabled vessel.

Respondents' reading of the 1992 Amendments allows *any* company in which SDC has an ownership interest to charter *any* non-hopper dredge (whether or not "*necessary*" to fulfill existing contract obligations) under *any* contract (not limited to a "specific" contract) and without regard as to whether the hopper dredge STUYVESANT, or any other hopper dredge, was operating on the project. By failing to give any meaning to the words "necessary" and "specific" and by failing to recognize that all three clauses of the grandfather provision are expressly tied to the STUYVESANT, the analysis of the Federal Circuit subverts the essential purpose of the 1992

Amendments—to close loopholes and interpose limitations on foreign control of vessels operating in the domestic dredging industry.[11] Instead it allows the grandfather provision in subparagraph (A) to be read so expansively that the entire non-hopper segment of the dredging industry becomes an opportunity for expanded foreign control by SDC or a related entity.

As noted earlier, the non-hopper sector of the domestic dredging industry is significantly larger than the hopper sector, thus making particularly perplexing a reading of the STUYVESANT grandfather provision that would allow the foreign-controlled company at issue that had never operated in the non-hopper sector, *carte blanche* authority to expand into that sector thus frustrating the basic purpose of the amendment. *See* note 7 *supra.* It also explains why DCA and the domestic industry agreed to a grandfather exception limited to the hopper dredging sector at the time the 1992 Amendments were pending. The industry would not, however, have agreed to a grandfather provision that swallowed the principal amendment by allowing the very foreign company at issue to *expand* into the far larger non-hopper sector of the industry, in which it had previously never operated. Such an agreement would have been squarely inconsistent with the purpose of limiting non-citizen control in the 1992 Amendments.

Accordingly, the Court should grant certiorari to review and reverse the Federal Circuit's erroneous interpretation of the 1992 Amendments.

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[11] *See* 138 Cong. Rec. H5006-02, H5017 (June 22, 1992)(remarks of Rep. Tauzin)(describing essential purpose of 1992 Amendments as a means to close "loophole[s]" in existing coastwise restrictions on dredging thus making "all domestically operated dredges subject to the same documentation and ownership requirements as other vessels under the coastwise trade laws.").

II. THE LONG-TERM VIABILITY OF THE U.S. DREDGING INDUSTRY IS THREATENED BY THE FEDERAL CIRCUIT'S ERRONEOUS INTERPRETATION.

As set forth above, the 1992 Amendments included a grandfather exception for the hopper dredge STUYVESANT, and narrowly limited opportunities for SDC to operate non-hopper dredges in the United States. At that time the *hopper* dredging business was the only business SDC had ever been in and the hopper dredge STUYVESANT was the only vessel SDC had ever operated under U.S. flag. What was being grandfathered was the STUYVESANT and the ability that SDC had before the 1992 Amendments to charter other hopper dredges. The fact that the grandfather provision also allowed SDC to charter *non-hopper* dredges was a narrow grant of authority, limited only to such chartering as was *necessary* to complete dredging obligations under a *specific* contract or for temporary replacement of a disabled vessel.

Because the grandfather clause allowing SDC to charter non-hopper dredges was carefully tailored to very narrow and limited circumstances, it may not properly be used to allow SDC to expand without limitation into the non-hopper sector of the dredge market. It did not authorize SDC, as a non-citizen, to enter into long-term arrangements for non-hopper dredges in order to marshal or inventory such vessels for contracts independent of the STUYVESANT. Yet, this is exactly what has happened. Through Bean Stuyvesant, SDC has amassed a fleet of non-hopper dredges and auxiliary vessels to expand its operations and compete in the non-hopper sector of the business. Under the Federal Circuit's erroneous interpretation of the grandfather provision, SDC may continue to expand without limitation in the non-hopper dredging market; thus, rendering virtually meaningless the U.S. citizen ownership and control imposed by the 1992 Amendments.

Under the Federal Circuit's erroneous interpretation, the enhanced citizenship requirements imposed by the 1992 Amendments will necessarily apply only to the two hopper dredges that have been documented under U.S. flag after 1992 because those are the only dredging vessels that clearly can not be chartered by SDC. The remaining 90% of all hopper dredges and 100% of all non-hopper dredges (in existence in 1992 or yet to be built) *can* be chartered to 100% foreign-owned companies affiliated with SDC under the Federal Circuit's interpretation.

What is more, even though the non-hopper dredges that are currently chartered to SDC happen to also be currently *owned* by U.S. citizen entities purporting to meet the 75% citizenship test (and *chartered* to entities that do not), application of the Federal Circuit's decision will authorize *every* one of these vessels to be owned by U.S. entities that do not meet the 75% U.S. citizen ownership standard. These entities could, in fact, be 100% foreign-owned. This is possible because the law prior to the 1992 Amendments generally allowed non-hopper dredging vessels to engage in dredging under a registry endorsement (which requires ownership by an entity established under U.S. law, but imposes no U.S. citizen equity requirement). The practical effect of excluding SDC from the requirements of the 1992 Amendments was to allow SDC alone the ability to engage in dredging with a vessel under a registry endorsement, without regard to the citizenship of the ultimate owner. *See* 46 U.S.C. 12105.

Under the Federal Circuit's interpretation, the narrow grandfather exception becomes a virtually limitless loophole whereby a single foreign company, SDC, is permitted to subvert U.S. ownership and control of the entire domestic dredging market in this country. Because the only foreign companies that can engage in U.S. dredging are those in which SDC has an ownership interest, no matter how small,

the Federal Circuit's decision creates the extraordinary circumstance where *a single foreign company*—not the U.S. government—holds the keys to decide those foreigners who are precluded from engaging in dredging in the United States, and those foreigners who can operate here, no matter how inimical to America's interests and security such foreign presence might be.

The Federal Circuit's construction of the grandfather exception will secure unique and unfair competitive advantages for SDC and Royal Boskalis and related companies like Bean Stuyvesant relative to U.S. citizen dredging companies. For example, unlike the equipment chartered to non-citizen Bean Stuyvesant, no U.S. dredging company can charter its dredging equipment to a non-citizen. Unlike Bean Stuyvesant, no U.S. dredging company can have a foreign partner with more than a 25% interest in either the vessel owner or vessel charterer. Unlike Bean Stuyvesant, no U.S. dredging company may re-flag their vessels under a foreign flag to accommodate changes in global market conditions, and later return them to U.S. flag without permanently forfeiting their domestic trading privileges.[12]

Given these unique advantages and the ability of Royal Boskalis—the world's largest dredging company—to obtain contracts under special authority and to shift the resulting

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[12] The 1992 Oceans Act requires all domestic dredge operations to meet the citizenship requirements for a coastwise endorsement which may only be maintained by a vessel that has always been operated under U.S. flag. *See* 46 C.F.R. § 67.19(d)(2); *see also* 46 U.S.C. App. § 883 (U.S.-built vessels operated under a foreign registry permanently forfeit their eligibility for a coastwise endorsement). Because vessels in which SDC had an ownership interest were not made subject to the more stringent requirements of the 1992 Amendments by the grandfather provision, they could engage in dredging without being subject to the potential forfeiture of their coastwise endorsement, unlike every other domestic dredging vessel owned by their U.S. competitors.

earnings overseas for more favorable tax treatment,[13] the Federal Circuit's interpretation threatens competition in the domestic dredging industry.

Moreover, the Federal Circuit's construction of the grandfather exception will also secure a unique and unfair competitive advantage for SDC and related companies relative to all foreign competitors. Unlike SDC, no other foreign company has the ability to participate in the U.S. market as anything more than a 25% minority partner. The Federal Circuit's erroneous reading of the 1992 Amendments thus conveys an incredible competitive advantage to SDC relative to *both* its U.S. *and* foreign competitors in the U.S. market notwithstanding the Congressional purpose in enacting the 1992 Amendments which was a means to limit SDC's operations by closing the loophole on all but SDC's then-existing business.

U.S. dredging companies, particularly in the non-hopper dredging business, have made significant investments in U.S. flag equipment with the expectation of the continued integrity of coastwise dredging laws. The Federal Circuit's erroneous interpretation of a narrow grandfather exception, and the foreseeable consequences of permitting Royal Boskalis/SDC virtually limitless opportunities to expand in the U.S. non-hopper dredging field, will frustrate these expectations and work a substantial harm on the U.S. dredging industry.

This is a matter of exceptional importance to the entire U.S. maritime industry which has a continuing interest in guarding against the erosion of our nation's cabotage laws

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[13] *See Corporate Inversion Transactions: Tax Policy Implications*, Report of the U.S. Department of the Treasury Office of Tax Policy (May 2002) (inappropriate shifting of income from U.S. companies to a foreign parent "provides a competitive advantage to companies that have undergone an inversion or otherwise operate in a foreign-based group. It creates a corresponding disadvantage for their U.S. competitors . . . .").

through limited exceptions that are expanded to become a means by which foreign companies and operators can gain entry to the domestic trades. Such entry, particularly for selected non-citizen companies as is the case here, disrupts a level playing field and can only disadvantage Americans who have invested in U.S. vessels based on U.S. law and who can not benefit from the subsidies, favorable tax treatments, or other economic benefits that foreign companies enjoy.

In simplest terms, the Federal Circuit's construction of the grandfather exception undercuts the stated purpose of the 1992 Amendments and threatens to erode U.S. citizen ownership and control of the domestic dredging fleet.

CONCLUSION

Amici respectfully submit that the Court should grant certiorari so that the Federal Circuit's decision can be reviewed and reversed.

Respectfully Submitted,

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